

A3-Au 255
8.585-6

copy 1
LAC

Report to the General Assembly

June 1992

1992 Sunset Reviews



S. C. STATE LIBRARY
JUL 01 1992
STATE DOCUMENTS

Legislative Audit Council

400 Gervais Street
Columbia, SC 29201
(803)253-7612
(803)253-7639 FAX

Public Members

Robert L. Thompson Jr., *Chairman*
Sherri Mathews-Hazel, CPA
Robert S. McCoy Jr.

Members Who Serve Ex Officio

Robert Wesley Hayes Jr.
Lieutenant Governor's Designee
James E. Bryan Jr.
Senate Judiciary Committee
John Drummond
Senate Finance Committee
Robert J. Sheheen
Speaker of the House
William D. Boan
House Ways & Means Committee
James H. Hodges
House Judiciary Committee

Director

George L. Schroeder

Authorized by §2-15-10 *et seq.* of the South Carolina Code of Laws, the Legislative Audit Council, created in 1975, reviews the operations of state agencies, investigates fiscal matters as required, and provides information to assist the General Assembly. Some audits are conducted at the request of groups of legislators who have questions about potential problems in state agencies or programs; other audits are performed as a result of statutory mandate.

The Legislative Audit Council is composed of three public members, one of whom must be a practicing certified or licensed public accountant, and six General Assembly members who serve ex officio.

Audits by the Legislative Audit Council conform to generally accepted government auditing standards as set forth by the Comptroller General of the United States.

Copies of all LAC audits are available to the public at no charge.

1992 Sunset Reviews was conducted by the following audit team.

Audit Supervisors

Audit Manager

Sara Schiechter-Schoeman, J.D.

Senior Auditor

Elisabeth S. Lewis

Typography

Candice H. Pou
Maribeth Rollings Werts

Audit Team

Senior Legal Counsel

Jane McCue Johnson

Associate Auditors

Marcia S. Ashford
Randy Cherry

Assistant Auditors

Kathleen C. Snider
Bobbi Leighton McCoy
Elizabeth W. Oakman

LAC

Report to the General Assembly

Board of Pharmacy

Board of Medical Examiners

Board of Veterinary Medical Examiners

Board of Nursing

Board of Chiropractic Examiners

Report Contents

Report Introduction	v
Board of Pharmacy	A-1
Board of Medical Examiners	B-1
Board of Veterinary Medical Examiners	C-1
Board of Nursing	D-1
Board of Chiropractic Examiners	E-1

Report Contents

Report Introduction

The sunset law (§1-20-10 *et seq.* of the South Carolina Code of Laws) provides for the termination of specified boards, programs and commissions on predetermined dates unless their continued existence is justified. The law gives the Legislative Audit Council responsibility for evaluating the performance of the agencies scheduled for termination. We are required to conduct a systematic review so that the General Assembly might be in a "better position to evaluate the need for their continuation, reorganization or termination."

Pursuant to the sunset law, we have reviewed the laws and operations of five medically-related South Carolina licensing boards. This report contains the reviews of five boards scheduled to terminate on June 30, 1993.

- State Board of Pharmacy
- State Board of Medical Examiners
- State Board of Veterinary Medical Examiners
- State Board of Nursing
- State Board of Chiropractic Examiners

We recommend the continuation of the five boards that we reviewed. Summaries of conclusions and findings for each board are found at the beginning of the individual audit reports.

Audit Objectives

The following objectives of the sunset reviews are established in state law:

- (1) Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (2) Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (3) Determine the overall costs, including manpower, of the agency under review.

- (4) Evaluate the efficiency of the administration of the programs or functions of the agency under review.
- (5) Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.
- (6) Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.
- (7) Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.
- (8) Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

Audit Scope and Methodology

We reviewed operations of the boards relevant to areas addressed by the eight sunset questions for the period FY 88-89 through FY 90-91. In some areas, such as complaint handling, the review was limited to a more recent period.

We reviewed South Carolina statutes and regulations, agency policies and records, and reports from other states and organizations. We interviewed agency officials, government officials in South Carolina and other states, and representatives of organizations and persons interested in the boards' activities.

We used sampling techniques to review the areas of licensing, complaints, and inspections, as applicable. Sampling methodologies, documented in individual audit files, varied according to what was most appropriate to meet the audit objectives. We reviewed internal controls related to the sunset issues; for example, we looked at agency controls in the licensing process, in complaint handling and for ensuring compliance with laws and regulations.

The reviews were conducted and this report was prepared in accordance with generally accepted government auditing standards.

Board of Pharmacy

Contents

Introduction

Background	A-1
----------------------	-----

Sunset Issues

Issue (1) Effects of Regulation	A-3
Issue (2) Impacts of Deregulation	A-3
Issue (3) Administrative Costs	A-4
Issue (4) Efficiency of Administration	A-6
Issue (5) Public Participation	A-7
Issue (6) Duplication of Services	A-7
Issue (7) Handling of Complaints	A-8
Issue (8) Compliance With the Law	A-9
Untimely Deposits	A-9
Personnel Evaluations	A-9

Appendices

A-I	Schedule of Fees	A-11
A-II	Board Comments	A-13

Contents

Introduction

After reviewing the laws and operations of the State Board of Pharmacy, we conclude that the regulation of pharmacists, pharmacy assistants and pharmacies should be continued. Termination of the board would represent a threat to public health and safety. We found that, in most areas, the board is complying with state laws and regulations and operating efficiently.

Background

Act 28 of 1925 created the State Board of Pharmacy. The board is responsible for examining and licensing pharmacists, regulating the compounding, dispensing, and sale of prescription drugs, and inspecting and issuing permits to pharmacies.

The Board of Pharmacy is composed of eight members. With the approval of the Governor and the General Assembly, the board elects six members who are pharmacists representing each of the state's six congressional districts. The Governor appoints one pharmacist as an at-large member and one public member to the board. The board is required to meet at least three times annually.

The executive director of the board serves as the chief drug inspector, and employs a staff of six. The board examines candidates for licensure, issues licenses to those qualified to practice pharmacy, and issues permits to pharmacies in the state. Other board duties include certifying practical experience for pharmacy interns, and conducting disciplinary hearings. The board is also authorized to approve the curriculum at the two pharmacy schools in the state, the Medical University of South Carolina and the University of South Carolina. The executive director is responsible for pharmacy inspections in the state to determine compliance with pharmacy laws and regulations.

As of February 1992, there were 4,162 pharmacists and 16 pharmacy assistants licensed by the board. As of December 1991, the board had issued permits to 1,163 pharmacies.

Introduction

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Pharmacy has no direct control over prices charged by pharmacists. However, board rules and regulations impose costs on pharmacists, such as examination, reexamination and annual licensure fees (see Appendix A-I). Also, pharmacies must meet minimum equipment standards. In addition, licensed pharmacists must complete continuing education courses to renew their licenses. Costs associated with regulation may be passed on to the consumer, although their fiscal impact cannot be determined.

We asked the staff of the Federal Trade Commission (FTC) to review the board's statutes and regulations to determine if there are any possible restrictive or anticompetitive practices. The FTC found nothing that would inhibit competition and thereby raise prices.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Regulation of the practice of pharmacy is a recognized governmental function in the United States. The practice of pharmacy is regulated in all 50 states. Termination of the Board of Pharmacy would adversely affect the health, safety and welfare of the citizens of South Carolina.

The absence of pharmacy regulation would be detrimental to the public's safety since patients and physicians rely upon pharmacists to fill prescriptions accurately. Incorrect medicines and dosages could result in

serious illness or death. The public's ability to identify a competent pharmacist would be substantially impaired without a uniform examination and licensure process. Also, the public would lose an important resource in resolving complaints against pharmacists and pharmacies. In addition, the board's routine inspection of pharmacies assures a minimum quality and sanitation level of pharmacies.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Board of Pharmacy, which receives an annual appropriation from the General Assembly, collects revenues through application, license renewal and other fees. The board's six employees include a director, two investigators, a business associate, a clerical specialist, and an administrative specialist. One investigator works on a part-time basis.

Since FY 86-87, the board has substantially complied with appropriation act requirements regarding revenue generation. In FY 87-88, the board's revenues were 107% instead of the 115% of appropriations required by the appropriation act. However, in succeeding fiscal years, the board exceeded its revenue requirements. The following table outlines the board's revenues, expenditures, and appropriations.

Table A.1: Source of Revenues, Expenditures and Appropriations

	FY 86-87	FY 87-88	FY 88-89	FY 89-90	FY 90-91
Revenues					
Pharmacy Permits	\$64,780	\$68,695	\$62,970	\$65,962	\$60,816
License Fees	129,175	136,247	181,650	200,590	261,260
Application Fees	29,570	52,915	53,405	67,185	57,845
Miscellaneous Revenues	221	414	501	427	352
Total	\$223,746	\$258,271	\$298,526	\$334,164	\$380,273
Expenditures					
Personal Services	\$91,303	\$112,846	\$130,464	\$133,959	\$133,053
Other Operating Expenses	62,332	94,496	92,570	106,815	91,010
Employee Benefits	15,819	27,573	25,652	28,818	30,912
Total	\$169,454	\$234,915	\$248,686	\$269,592	\$254,975
State Appropriation					
Total	\$173,789	\$242,228	\$248,796	\$284,822	\$293,754

Source: State Budget and Control Board documents.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Board of Pharmacy is required to inspect all drug outlets on an annual basis. Section 40-43-300 of the South Carolina Code of Laws requires the board's chief drug inspector, or his designee, to conduct annual inspections of all drug outlets in the state. In our review of inspections from January 1989 through December 1991, we found that some pharmacies were not inspected annually.

As of December 1991, the Board of Pharmacy licensed 1,163 pharmacies. We reviewed the files of 128 pharmacies to determine if they were inspected annually. Of the 128 files sampled, 39 (30%) had no evidence of annual inspection. Of those not inspected, 32 (82%) were from 1990.

According to the board's executive director, from July through November 1990, the board had insufficient staff to inspect all pharmacies as required because one of the board's inspectors retired in June 1990. However, since November 1990, when the board hired an additional inspector, most inspections have been completed as required.

Recommendation

The Board of Pharmacy should continue to ensure that pharmacies are inspected annually as required by law.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Board of Pharmacy is made up of eight members, one of whom must be an at-large lay member. The board, which is required to hold at least three meetings annually, usually schedules five meetings a year. Notices of the meetings are posted outside the board's office. In addition, the board sends notice of its meetings to four newspapers with local and statewide circulation. Upon request, the board notifies interested parties of its board meeting. The board's telephone number is listed in the City of Columbia and the state government telephone directories.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The licensing and inspection of pharmacies in South Carolina is duplicated, to some extent, by federal and state agencies other than the Board of Pharmacy. However, we did not find this to be a material problem. The federal Drug Enforcement Agency (DEA) requires pharmacists to obtain a DEA license in order to dispense controlled substances. Although DEA has the authority to inspect pharmacies for violations of federal drug laws, according to a state official, such inspections are usually relegated to state drug enforcement agencies. Also, the United States Food and Drug Administration (FDA) has the authority to investigate complaints regarding the misbranding and/or adulteration of drug products involved in interstate commerce.

Both statute and regulation require the Department of Health and Environmental Control's (DHEC) Bureau of Drug Control to inspect and license annually pharmacies and hospitals which dispense controlled

substances. The bureau is also required to audit, periodically, the controlled substance inventories of pharmacies. The bureau is authorized to seize illegally diverted drugs and initiate prosecution against violators of the state controlled substance act. The Board of Pharmacy annually licenses and inspects pharmacies for compliance with all state pharmacy laws, and has the authority to revoke or suspend a pharmacist's license or a pharmacy permit for violations of pharmacy law. The board reviews the controlled substance logs of pharmacies; however, this review is not as comprehensive as the audits conducted by DHEC. Also, DHEC and the board make appropriate complaint referrals to each other.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

We sampled 56 (60%) of 93 complaints for FY 89-90 through FY 90-91 and found that they were processed appropriately. Consumers filed 28 of the complaints. Pharmacists filed 7 complaints and 12 complaints were filed by physicians. The remaining complaints were filed by professional organizations, members of the pharmacy board, or were anonymous. We found the board investigated the complaints thoroughly and resolved them appropriately within a reasonable period of time. However, the board has not established written procedures for processing complaints. Written procedures would ensure that complaints are handled thoroughly and consistently.

Recommendation

The Board of Pharmacy should establish formal, written procedures for processing complaints.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

We reviewed all applicable state laws and regulations pertaining to the regulation of pharmacy and found that the board does not make timely deposits of licensure fees as required. Also, the board does not follow personnel requirements that employee performance evaluations be conducted annually.

Untimely Deposits

State Auditor reports for FYs 88-89, 89-90 and 90-91 cited the board for not depositing receipts in a timely manner. Section 11-5-210 of the South Carolina Code of Laws requires that deposits be remitted to the State Treasurer at least once a week. Our review of fees deposited from July 1990 to January 1992 indicates that, while its timeliness has improved, the board continues to make some late deposits.

Of the 86 deposits we reviewed, 42 (49%) contained checks which were withheld for more than a week. Of the 42, 24 (57%) contained checks which were held for two weeks or longer. A board staff member indicated that they wanted to ensure that practitioners met continuing education requirements before depositing checks which delayed deposits. The board indicated that deposits are now being made in a more timely manner. Since August 1991, we found that the board has improved the timeliness of its deposits.

Personnel Evaluations

In our 1986 audit, we noted that the board did not conduct annual performance evaluations of its staff. During our current review, the board's executive director indicated that annual personnel evaluations are not done. Section 8-11-230 authorizes the Budget and Control Board's Division of Human Resource Management (DHRM) to set guidelines for employee evaluations. DHRM guidelines include a requirement that all permanent employees receive an annual performance evaluation.

Recommendations

The Board of Pharmacy should ensure that all deposits are made at least once a week, as required by state law.

The board should follow Division of Human Resource Management guidelines that require employees to be evaluated formally at least once a year.

Schedule of Fees FY 90-91

License Fees	
Initial License Renewal	\$50
Annual License Renewal	\$50
Annual Drug Outlet Permit Renewal	\$50
New Drug Outlet Permit	\$100
Exam Fees	
Examination	\$220
Other Fees	
Penalty for Late License Renewal	\$50
Penalty for Late Permit Renewal	\$50
Reciprocity	\$300
Grade Certification for Reciprocity	\$10
Pharmacy Intern Certificate	\$25
Pharmacy Intern Certificate Renewal	\$25
Reinstatement for Failure to Acquire Continuing Education	\$50

Source: Board of Pharmacy.

Board Comments

Board Comments

South Carolina Board of Pharmacy



POST OFFICE BOX 11927
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 734-1010

May 26, 1992

George K. Schroeder, Director
Legislative Audit Council
State of South Carolina
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

After reviewing the final draft of the report prepared by your office concerning the "sunset" review of the Board of Pharmacy, we would make the following comments in response to your recommendations.

1. The Board will continue to ensure that pharmacies are inspected annually as required by law so long as the Board maintains adequate personnel to perform this function.
2. Enclosed is a copy of a draft of the procedures for processing complaints. These proposed procedures will be presented to the Board, for consideration to adopt, at the June meeting. Also, enclosed is a copy of the form that will be used for the recording of complaints received by the Board.
3. The Board is steadily improving in making timely deposits. The Board is making at least weekly deposits, and the great majority of checks are deposited in a timely manner within a week. There are some occasions when a check will not be deposited within a week due to a technical problem with an application or a form. The added expense and time consumed in the paperwork necessary for preparing a refund check far outweighs the benefits of depositing a check in a timely manner.

The Board fully intends to comply with the mandated annual employee performance reviews, however, we feel that required EPMS procedure causes undue hardship, particularly for small agencies without personnel

George L. Schroeder, Director
May 26, 1992
Page Two

officers. We feel that it is too lengthy, too involved, and too technical, serving no purpose with this small agency of closely working individuals. The staff is still working to develop an employee performance review that will be acceptable to the Division of Human Resource Management, and that will give the employees a review that is comprehensive, adequate, and fair to the employees, who work very hard performing the multitude of tasks required to operate a small agency.

Thank you for allowing us to make comments on the report. We appreciate the professional manner in which Ms. Beth Lewis and Mr. Randy Cherry conducted the audit, and the fairness of the final draft of the report. If we can answer any further questions or make any additional explanations, please do not hesitate to contact this office.

Sincerely,


C. Douglas Chavous
Executive Director

CDC:nbd

Enclosures

POLICY AND PROCEDURE FOR THE PROCESSING OF COMPLAINTS

I. ACCEPTING COMPLAINTS

Complaints will be accepted by the Board in writing or by telephone. The complaints may be submitted by the public; other agencies; licensees; physicians, dentists, nurses, or others from the medical field; law enforcement officers; or anyone deemed harmed by a pharmacist.

II. INFORMATION REQUIRED

The person submitting the complaint must furnish the following information:

1. Name, address, and telephone number of the individual submitting the complaint. If anonymity is desired by the individual submitting, the Board records will not show this information.
2. Name of injured party, unless anonymity is desired. The anonymity will be protected if the complaint can be investigated in an efficient, effective and practical manner without disclosing the name of the injured party. When anonymity is desired, but the proper and complete investigation of the complaint cannot be conducted without revealing the name of the injured party, the individual submitting the complaint must decide whether the Board should proceed with the investigation.
3. Name of the pharmacy where the incident occurred.
4. Name of the pharmacist, or unlicensed employee, whom the complaint is issued against, if the name is known by the individual submitting the complaint.
5. Complaint. 6. Name of Person Receiving Complaint. 7. Date Complaint Received.

III. RESOLUTION OF COMPLAINT

1. The complaint will be investigated by the Chief Drug Inspector, or the Assistant Drug Inspector.
2. The complaint will be investigated as soon as possible and practical.
3. An investigation report will be completed, and filed, on the form adopted by the Board.
4. The complaint will be entered in the log book, which contains:
 - (a) Date complaint received by the Board;
 - (b) Name of pharmacy/pharmacist, or other person, the complaint is submitted against;
 - (c) The name of the person submitting the complaint;
 - (d) The nature of the complaint;
 - (e) A statistical section containing:

Nature of Complaint: 1 (Against Licensee), 2 (Against Board),
3 (General);

Complaint Received From: 1 (General Public), 2 (Other Licensee),
3 (Other Agency), 4 (Other);

Disposition of Complaint: 1 (Investigation), 2 (Hearing), 3 (Referred),
4 (Letter of Corrective Action), 5 (No
Action), 6 (Pending), 7 (Other);

Date Complaint Completed (This date will reflect the date the case is
closed and the report is typed);

Letter Written: "Y" if Letter of Corrective Action is written to the
pharmacist, "N/A" if no letter is written;

Report Typed: "Y" for yes.

POLICY AND PROCEDURE

COMPLAINTS

PAGE TWO

IV. ACTION TAKEN BY THE BOARD

Based on the completed investigation, the following actions may be taken:

1. No action when the investigation proves there is no violation of the laws, rules and regulations governing the practice of pharmacy;
2. The complaint is referred to the DHEC Bureau of Drug Control, other Board, or other proper authority, when the information, or the investigation, indicates that the complaint is not under the jurisdiction of the Board of Pharmacy;
3. "Letter of Corrective Action" is issued to the pharmacist, or other responsible party, who precipitated, or was involved in, the complaint. A "Letter of Corrective Action" is issued when there is no harm to the patient, no flagrant or intentional violation of laws and regulations, or there is no evidence of lack of competency of the pharmacist;
4. An Administrative Hearing is held when the complaint involves a serious violation of the laws, rules and regulations governing the practice of pharmacy, or a serious dispensing error. The hearing may be held before the full Board, or may be held in a Pre-Hearing Conference before the Chairman and Vice-Chairman (the Chairman and Vice-Chairman make the determination if a Pre-Hearing Conference is sufficient. Any decision made in a Pre-Hearing Conference must be approved by the full Board).

V. NOTIFICATION OF ACTION

The Chief Drug Inspector will notify the person, who issued the complaint, of the action taken:

1. In writing, which may be a copy of the "Letter of Corrective Action";
2. By telephone.

Board of Medical Examiners

Contents

Introduction

Background B-1

Sunset Issues

Issue (1) Effects of Regulation B-3

Issue (2) Impacts of Deregulation B-3

Issue (3) Administrative Costs B-4

Issue (4) Efficiency of Administration B-5

 Motor Vehicles B-6

 Physician Assistants B-6

Issue (5) Public Participation B-7

Issue (6) Duplication of Services B-8

Issue (7) Handling of Complaints B-8

 Impairment Testing B-9

Issue (8) Compliance With the Law B-10

 Out-of-Town Board Meetings B-10

Appendices

B-I Schedule of Fees B-13

B-II Board Comments B-15

Contents

Introduction

After reviewing the laws, regulations and operations of the State Board of Medical Examiners, we conclude that the board should be continued. The board regulates physicians, physician assistants and respiratory care practitioners. Termination of this board would pose a threat to the safety, health and welfare of the public. We did, however, find areas in which cost effectiveness could be improved.

This audit reviews the regulation of physicians and physician assistants. We did not include the respiratory care practitioners since we conducted a separate sunset audit on this certification program in 1991.

Background

In 1920, South Carolina created a board with authority over medical doctors, nurses, chiropractors, naturopaths and other health-related professions. In 1969, Act 433 established the State Board of Medical Examiners as a separate board. The board, through its examinations, licensing, investigations and disciplinary functions, regulates the practice of medicine and osteopathy. Osteopathy is a branch of medicine which places special emphasis on the inter-relationship of the musculo-skeletal system to all other body systems.

The board, composed of ten members, must include a lay member and a doctor of osteopathy. The law requires two members to be physicians or surgeons from the state-at-large and six to be physicians or surgeons representing each of the six congressional districts. Each member of the board must reside and practice in the congressional district which he represents. All physician members must be licensed by the board and practicing their profession. Though not a member of the board, a representative of the South Carolina Academy of Physician Assistants may attend board meetings to present the concerns of physician assistants.

The lay member and one member from the state-at-large are appointed by the Governor, with the advice and consent of the Senate. The board nominates physicians or surgeons from the six congressional districts and each nominee is submitted for election to all licensed physicians residing in the districts. Also, another physician or surgeon and the doctor of osteopathy are elected from the state-at-large. The board submits results of the election to the Governor for appointment, with the advice and consent of the Senate.

The 18-member Medical Disciplinary Commission works with the board by making findings of fact and recommendations to the board on

complaints. Panels of at least three commissioners are designated by the board and assigned a complaint. The panel, empowered to hold a hearing on the complaint, follows the requirements of the Administrative Procedures Act.

As of December 1991, there were 8,470 licensed physicians and 60 certified physician assistants in South Carolina.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The State Board of Medical Examiners does not set prices to be charged by licensees. The board does assess fees for examinations, licensure and annual re-registration for physicians and physician assistants (see Appendix B-I). Such costs may be passed on to the consumer; however, it is unlikely that they significantly impact the price of services.

We asked the staff of the Federal Trade Commission (FTC) to review the board's statutes and regulations to determine if there are any possible restrictive or anticompetitive practices. The FTC found nothing in the board's statutes and proposed regulations, which are scheduled to become effective in May 1992, that would inhibit competition.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Terminating the State Board of Medical Examiners and eliminating its regulation of the medical profession would cause direct harm to the public. The board helps to ensure that physicians and physician assistants caring for persons in this state are properly trained and conduct themselves in a professional manner. The board has the ability to remove physicians and physician assistants who commit illegal, unethical or unprofessional acts from the practice of medicine. Also, all other states license physicians. Therefore, continuing regulation of this profession is in the best interest of the public.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The State Board of Medical Examiners receives an annual appropriation from the General Assembly. The board collects revenues for deposit in the general fund through examinations, licensure renewal and other fees. The board has 15 full-time and 2 part-time employees.

For FY 87-88 through FY 88-89, the board generated the required revenue to meet each appropriation act's proviso which states that a professional licensing agency must generate revenue equal to 115% of its appropriation. Because of a bookkeeping change required by the State Auditor, the board's reported revenue for FY 89-90 appears to be insufficient. However, revenues received by the board during that fiscal year did meet the proviso's 115% requirement. The board also met the requirement for FY 90-91 when the ratio was reduced to 110%. Table B.1 outlines the board's revenues, expenditures and appropriations.

**Table B.1: Source of Revenues,
Expenditures and Appropriations**

	FY 86-87	FY 87-88	FY 88-89	FY 89-90 ^a	FY 90-91
Revenues					
License Fees	\$1,133,378	\$969,141	\$940,473	\$493,162	\$1,042,123
Exam Fees	15,200	14,400	47,660	35,710	39,410
Miscellaneous Revenues	15,960	25,220	25,005	28,890	31,315
Total	\$1,164,538	\$1,008,761	\$1,013,138	\$557,762	\$1,112,848
Expenditures					
Personal Services	\$335,058	\$365,384	\$392,808	\$388,226	\$415,199
Other Operating Expenses	223,793	245,148	286,016	261,417	321,948
Fringe Benefits	61,700	68,146	72,446	75,760	88,714
Total	\$620,551	\$678,678	\$751,270	\$725,403	\$825,861
State Appropriation					
Total	\$702,977	\$717,334	\$758,293	\$760,956	\$838,313

^a As required by the State Auditor, the board recorded revenue collected in April, May, and June 1990 for FY 90-91, rather than FY 89-90.

Source: State Budget and Control Board documents.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The board has implemented several recommendations regarding efficiency which we made in our 1986 report. The board also has a complete policies and procedures manual. Two areas are discussed below.

Motor Vehicles

Our previous report noted inefficient use of cars. The board owns five cars which are assigned individually to investigators. In December 1991, the board turned in as surplus a sixth car, which was primarily used for commuting by the executive director, and does not plan to replace it. Mileage records for a one-year period indicate that official mileage on the remaining cars is significantly above the required minimum amount. Four of the five cars, however, are full-sized. Since the cars are used primarily to travel the state while conducting investigations, we could find no need for full-sized cars. The executive director of the board agrees that mid-sized cars would be sufficient for their purposes.

Physician Assistants

Our previous audit also contained several recommendations regarding the regulation of physician assistants (PAs). As a result of the recommendations, the board has begun issuing temporary certificates to PAs waiting to take or receive scores from the national certification exam.

Section 40-47-25 of the South Carolina Code of Laws allows for a representative of the South Carolina Academy of Physician Assistants to attend all board meetings and speak about the concerns of PAs. This section was amended in 1987 to permit a physician to supervise more than one PA if they are working in a publicly supported or charitable institution providing free or reduced fee service with board approval. Under any other circumstances, however, a physician may supervise only one PA.

Some restrictions on PAs are still in effect. These restrictions include requiring the presence of the supervising physician and not allowing PAs to work in satellite offices. We reviewed information compiled by the American Academy of Physician Assistants and found that other southeastern states allow PAs to work more independently. For example, North Carolina, Georgia, West Virginia, and Kentucky allow PAs to work in satellite offices. PAs may also work without a physician present in these states and Florida as long as the PAs are in communication with the physicians or they are readily available.

South Carolina's restrictions on PAs could prevent the medical community from fully using PAs. If these restrictions are modified, it may help relieve the burden on many physicians, especially those in rural areas of this state.

We reviewed a limited sample of licensure files and found that the board is processing them in an efficient and uniform manner.

Recommendations

The State Board of Medical Examiners should purchase only compact or intermediate size sedans when replacing vehicles.

The board should review the regulations on physician assistants to determine how physician assistants can be used more fully within the medical community.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

As required by statute, the ten-member board includes one lay member from the general public. The board conducts public meetings approximately four times a year. Notices and agendas of these meetings are posted at the board offices and are mailed to a major newspaper in the state approximately two weeks in advance. In addition, the board is listed in both the state government and City of Columbia telephone directories.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The board's functions are not duplicated by any other state or federal entity. No other agency or entity has authority to license, examine or discipline physicians and physician assistants; however, other entities license physicians to dispense controlled substances and issue certificates for specialties.

The Department of Health and Environmental Control has the authority to license physicians for the dispensing of controlled substances. Any violations found by this agency are forwarded to the State Board of Medical Examiners. Also, the American Board of Medical Specialties, a private organization, may issue certificates for various medical specialties and sub-specialties.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The State Board of Medical Examiners processes complaints in an efficient manner. The board received 154 complaints in FY 88-89, 163 in FY 89-90 and 224 in FY 90-91. We reviewed a random sample of 105 complaints from FY 89-90 and FY 90-91.

According to the board's procedure manual, written complaints received by the board are logged in and assigned to an investigator. Five investigators are assigned complaints to investigate based primarily on geographical areas across the state. After an investigation, the case is either dismissed or formal action is taken by the board. Processing of

these complaints and investigations appeared consistent and well documented.

An issue relating to complaints against impaired physicians is discussed below.

Impairment Testing

The board has no authority to require an applicant or licensee to submit to a chemical, mental or physical test to determine if an individual is impaired. A physician may continue to practice medicine until evidence is gathered and presented to the board for action. This process can be time consuming and the physician is allowed to continue to practice. Some cases involving allegations of impairment may take many months to resolve while the physician continues to practice.

Section 1-23-370 of the South Carolina Code of Laws does, however, allow an agency to suspend a license pending proceedings for revocation or other action if emergency action is needed to protect the public health, safety or welfare. However, this provision does not authorize the board to require the individual to submit to testing. Without test information, it is difficult to prove impairment.

Statutes in other southeastern states, including North Carolina, Georgia, West Virginia, Kentucky, Tennessee and Florida, authorize their medical boards to require testing when needed. Also, most of these statutes specify that the results of the testing are admissible in any hearing before the board.

The Federation of State Medical Boards of the United States supports authorizing medical boards to require a licensee or applicant to submit to a mental or physical exam or a chemical dependency evaluation when necessary. The federation also recommends that the results of these exams should be admissible in any board hearing.

The health, safety and welfare of the public could be better protected if the board is allowed to require testing, when deemed appropriate, of a physician to determine impairment.

Recommendation

The General Assembly may wish to consider amending §40-47-200 of the South Carolina Code of Laws to grant the State Board of Medical Examiners the authority to require testing of a licensee or applicant, upon reasonable grounds, to determine physical, mental, chemical or professional impairment. The results of such tests should be admissible in any proceeding before the board.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The State Board of Medical Examiners is regulated by state statutes and regulations. We found no evidence of material noncompliance. However, we did find an area where the board could save funds.

Out-of-Town Board Meetings

Our review of travel expenditures revealed that board meetings held outside of Columbia cost the board significantly more money than those held in Columbia. For example, since 1989, the board has held its July meeting in Hilton Head. The July 1991 board meeting in Hilton Head cost approximately \$9,000 more than the January 1992 board meeting in Columbia. One reason for the higher costs is reimbursements for meals, travel and lodging for 12 of the board's 15 staff members who attended the 3-day meeting. When meetings are held in Columbia, where the board's office is located, staff receive no reimbursements.

All meetings held since January 1989 were in Columbia or Hilton Head, with the exception of one meeting held in Greenville. While occasionally there may be reasons to hold board meetings outside of Columbia, cities other than Hilton Head may be better choices in terms of cost and location.

Recommendation

The Board of Medical Examiners should consider holding all board meetings in Columbia to reduce costs. If the board wishes to hold board meetings outside of Columbia, various locations around the state should be considered and staff reimbursement costs should be taken into account.

Sunset Issues

Schedule of Fees FY 90-91

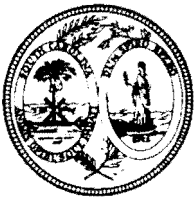
License Fees	
Physicians	
Initial License Renewal	
FLEX Exam	\$600 ^a
SPEX Exam	\$500 ^a
Endorsement	\$425 ^a
Registration	\$80
Limited License	\$150
Temporary License	\$75
Physician Assistants	
Application and Examination	\$75
Re-registration	\$25
Temporary Certificate	\$20
Limited Certificate	\$25

^a Regulation 81-80 sets a \$600 cap on FLEX exam fee; Regulation 81-90 sets a \$500 cap on endorsement fee and a \$500 cap on SPEX exam fee.

Source: Board of Medical Examiners.

Board Comments

Board Comments



State Board of Medical Examiners
of South Carolina
1220 Pickens Street
P.O. Box 12245
Columbia, South Carolina 29211

[803] 734-8901

STEPHEN S. SEELING
EXECUTIVE DIRECTOR

May 22, 1992

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Thank you for the opportunity to provide a response to the Legislative Audit Council's report on the State Board of Medical Examiners.

Initially, I would like to commend the LAC staff that we worked with over the past three months. Both Marcia Ashford and Beth Lewis are consummate professionals and a credit to your organization.

We fully support the recommendation that this Board purchase only compact or intermediate sedans when replacing vehicles.

We also support your recommendation of a statutory change permitting the Board to test individuals for impairment.

We fully support your recommendation that the Board choose meeting sites with the goal of reducing costs. Columbia has already been selected as the site for the Board's October, 1992, and January, 1993, meetings. (At this late date, it is not possible to change the date/site of our July, 1992, meeting, given that legal hearings have been scheduled and notices already provided to attendees.

Regarding Physician Assistants, the Board in recent years has made several regulatory changes. These include provision for a limited certificate and special arrangements for employment of Physician Assistants in publicly supported or charitable institutions. We have an excellent working relationship with the South Carolina Academy of Physician Assistants and the President of that organization makes a presentation at each Board meeting. We will continue to review applicable laws

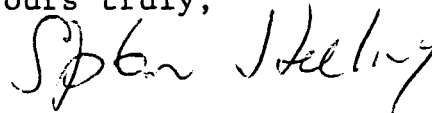
STEPHEN I. SCHABEL, M.D., PRES., CHARLESTON
MEDICAL UNIVERSITY, 29425: PH. 792-4033
ROY J. ELLISON, JR., M.D., V. PRES. GREENVILLE
890 W. FARIS RD., #480, 29605: PH. 455-8431
JAMES S. GARNER, JR., M.D., SEC., MULLINS
P.O. BOX 609, 29574: PH. 464-7111
J. ERNEST LATHEN, M.D., GREENVILLE
527 MILLS AVE., 29605: PH. 233-3901
VERNON E. MERCHANT, JR., M.D. ANDERSON
1221 N. FANT ST., 29621: PH. 226-6246
R. PATTEN WATSON, M.D., COLUMBIA
1333 TAYLOR ST., #5-B, 29201: PH. 254-3501
JAMES C. HOLLER, JR., M.D., ROCK HILL
1317 EBENEZER RD., 29732: PH. 327-1174
C. DAYTON RIDDLE, JR., M.D., GREENVILLE
701 GROVE RD., 29605: PH. 455-7878
JAMES R. EDINGER, D.O., ORANGEBURG
P.O. BOX 468, 29115: PH. 534-0053
MRS. ELIZABETH S. CHRISTENSEN, AIKEN
3 IVY CIRCLE, 29801: PH. 648-4998

George L. Schroeder
May 12, 1992
Page Two

regarding Physician Assistants to insure that the best interests of all our citizens are served.

Once again, we want to emphasize that our experiences with the Legislative Audit Council have been extremely constructive and positive. The Board looks forward to working with you in the months ahead.

Yours truly,

A handwritten signature in dark ink, appearing to read "Stephen Seeling". The signature is fluid and cursive, with the first name "Stephen" and last name "Seeling" clearly distinguishable.

Stephen S. Seeling
Executive Director

SSS:lc

Board of Veterinary Medical Examiners

Contents

Introduction

Background C-1

Sunset Issues

Issue (1) Effects of Regulation C-3

Issue (2) Impacts of Deregulation C-4

Issue (3) Administrative Costs C-4

Issue (4) Efficiency of Administration C-5

 Policies and Procedures Needed C-6

 Incomplete License Files C-6

 Timesheets C-6

Issue (5) Public Participation C-7

Issue (6) Duplication of Services C-8

Issue (7) Handling of Complaints C-8

Issue (8) Compliance With the Law C-9

 Investigator/Inspector C-9

 Fees C-10

 Proof of Graduation for Animal Health Technicians C-11

 Continuing Education for Animal Health Technicians C-11

 Good Physical and Mental Health C-11

 Good Moral Character C-12

Appendices

C-I Schedule of Fees C-13

C-II Board Comments C-15

Contents

Introduction

After reviewing the laws and operations of the South Carolina Board of Veterinary Medical Examiners, we conclude that the regulation of veterinarians and animal health technicians should be continued. Termination of the board would represent a threat to public health, safety, and welfare. We found the board to be complying overall with state laws and regulations and to be operating efficiently; however, we recommend improvement in several areas.

Background

The board, created in 1920, licenses veterinarians and certifies animal health technicians. By statute, the board is to protect the public from incompetent, unscrupulous and unqualified practitioners, and from unprofessional or illegal actions by licensed veterinarians or certified animal health technicians. To carry out this mandate, the board is required to examine applicants, license or certify successful candidates, investigate complaints, and discipline those found in violation of the statutes or regulations. To obtain license renewal, veterinarians must complete continuing education courses.

The board has no employees; it contracts for administrative support services with a private company. The eight-member board is composed of one at-large consumer advocate, one at-large veterinarian, and six additional veterinarians, representing each of the six congressional districts. State law requires the board to conduct elections to nominate two veterinarians for each available district seat. All licensees residing in South Carolina may vote in these elections. In addition to appointing the two at-large members, the Governor selects each district's member from the two elected nominees.

In June 1991, the board recorded 916 licensed veterinarians and 76 certified animal health technicians in the state. During FY 90-91, the board licensed 75 additional veterinarians. The board also certified 15 additional animal health technicians in that year.

Introduction

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The State Board of Veterinary Medical Examiners does not set prices charged by licensees for their services. The board does assess fees for examinations, licensure of veterinarians, certification of animal health technicians, and annual renewal fees (see Appendix C-I). These costs may be passed on to the consumer; however, it is unlikely that they significantly impact the price of services. Likewise, it is improbable that the cost of continuing education for veterinarians significantly affects the cost to consumers.

Upon our request, the staff of the Federal Trade Commission (FTC) reviewed the board's statutes and regulations to determine if they were anticompetitive or restrictive. Their response criticized statutory restrictions on solicitation, which may limit competition and thereby affect consumer costs. Section 40-69-140(11) of the South Carolina Code of Laws prohibits veterinarians from using solicitors (third parties) to obtain patronage. According to the FTC:

We have opposed banning the use of solicitors Such restrictions on the free flow of truthful information may make it more difficult for buyers to learn about differences in price and quality thereby insulating competitors from direct competition.

Recommendation

The General Assembly may wish to consider deleting §40-69-140(11) of the South Carolina Code of Laws to allow veterinarians to use solicitors for obtaining patronage.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Terminating the State Board of Veterinary Medical Examiners and eliminating its regulation could cause direct harm to the public. The board helps to ensure that veterinarians and animal health technicians in this state are properly trained and conduct themselves in a professional manner. The board has the ability to remove veterinarians and animal health technicians who commit illegal, unscrupulous or unprofessional acts from the practice of veterinary medicine. Therefore, regulation of this profession continues to be in the best interest of the public.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Board of Veterinary Medical Examiners receives an annual appropriation from the General Assembly. The board collects examination and license renewal fees which are deposited in the general fund. The board has consistently met the appropriation act requirement that, for FY 87-88 through FY 89-90, a professional licensing agency must generate at least 115% of its appropriation. The board also met the reduced requirement of 110% in FY 90-91. Table C.1 outlines the board's revenues, expenditures and appropriations.

The board has no employees, but contracts instead with an administrative support company to perform 100 hours of administrative work per month for a monthly rate of \$1,600.

Table C.1: Source of Revenues, Expenditures and Appropriations

	FY 86-87	FY 87-88	FY 88-89	FY 89-90	FY 90-91
Revenues					
License Fees	\$22,335	\$22,845	\$22,980	\$37,520	\$46,515
Exam Fees	6,700	7,950	6,775	2,400	8,850
Miscellaneous Revenues	7	•	•	•	•
Total	\$29,042	\$30,795	\$29,755	\$39,920	\$55,365
Expenditures					
Personal Services	\$11,510	\$11,689	\$13,291	\$8,351	\$2,485
Other Operating Expenses	8,751	10,984	10,464	23,717	30,713
Fringe Benefits	726	756	804	399	10
Total	\$20,987	\$23,429	\$24,559	\$32,467	\$33,208
State Appropriation					
Total	\$22,895	\$24,487	\$24,805	\$33,000	\$33,478

Source: State Budget and Control Board documents.

Issue (4)

Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

We found several problems which could affect the efficiency of the Board of Veterinary Medical Examiners. In our 1986 audit, we reported that the board was working to develop a policies and procedures manual; however, the manual has not been developed. Also, the board has no inspection

program, which is discussed under Issue 8. Some documents on current licensees have been sent to the Department of Archives and History, where they are scheduled for disposal. Also, the board's contract administrator does not maintain timesheets.

Policies and Procedures Needed

The Board of Veterinary Medical Examiners has not adopted a policies and procedures manual. Section 1-23-140 of the South Carolina Code of Laws requires that state agencies adopt and make available to the public a written policy statement of all formal and informal procedures. Written procedures provide a system of operating controls. The absence of guidelines for complaint handling, processing applications, and investigations may result in inconsistent actions.

Incomplete License Files

The board does not maintain complete files on its current licensees. During our review of licensees' files, we found that the board's former secretary, in 1985, transferred files containing documentation supporting initial licensure to archives and history. Therefore, for veterinarians and animal health technicians licensed prior to that time, the board's files generally do not contain such items as licensure applications and examination results. Although archives had been authorized to dispose of the files, they were available and we were able to review them.

Timesheets

The board, which employs no staff, has contracted with a private firm for 100 hours a month to perform its administrative support functions. This firm, which employs three full-time employees, charges the board \$1,600 a month. The Board of Registration for Geologists and the Board of Examiners in Optometry also contract with this firm for administrative support. We found that the veterinary board has not required that its contractor maintain timesheets for hours worked.

The contract administrator has indicated that timesheets are not maintained for the contracted hours charged to the board. As a result, we could not review the number of contracted hours the firm has spent on board business. Without timesheets, the board cannot adequately assess the contract administrator's efficiency.

Recommendations

The Board of Veterinary Medical Examiners should develop a policies and procedures manual.

The board should promptly retrieve from the Department of Archives and History all documentation which relates to the initial licensure of current licensees.

The board should ensure that its contract administrator maintains timesheets for all hours worked for the board.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

As required by statute, the eight-member board includes one member who serves as a consumer advocate. The board conducts public meetings approximately six times a year. Notices and agendas of these meetings are posted at the board offices and are mailed to two major newspapers in the state approximately one week in advance. In addition, the board is listed in both the state government and City of Columbia telephone directories.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The board's functions are not duplicated by any other state or federal entity. No other agency or entity has licensing, examining or disciplinary authority over veterinarians.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

We reviewed the board's 35 complaints received from FY 89-90 through FY 90-91, and found that they were processed adequately. Consumers filed 33 (94%) of the complaints. We found the board investigated the complaints thoroughly and resolved them appropriately. On average, complaints were resolved in approximately five months. However, the board has not established written procedures for processing complaints.

Board members conduct the complaint investigations, which may tend to lengthen the investigative process. For FY 91-92, the board was appropriated funds for a part-time investigator but, as of April 1992, had not hired one (see p. C-9).

The board requires that complainants file an original and eight copies of complaints and supporting documentation. This burdensome and costly requirement might discourage complaints and possibly allow misconduct to go unreported. Responding licensees are burdened by a similar requirement; they must provide an original and eight copies of documentation pertaining to a complaint.

Recommendations

The Board of Veterinary Medical Examiners should establish formal, written procedures for processing complaints.

The board should discontinue the practice of requiring complainants and respondents to submit multiple copies in the complaint process.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The State Board of Veterinary Medical Examiners is governed by South Carolina law. We found several areas where the board has not fully complied with state statutes and regulations, as discussed below.

Investigator/Inspector

The board has not hired an investigator/inspector, which it needs to carry out its duties, although the General Assembly appropriated the board funds to do so. Section 40-69-70(1) of the South Carolina Code of Laws requires the board to promulgate regulations (which may include minimum standards for veterinarians' facilities), employ investigators, and inspect licenses. By regulation, the board has established minimum sanitary and record-keeping requirements for all locations where veterinary medicine is practiced. However, according to board members, the board has not employed an investigator nor inspected veterinarians' premises. Therefore, the board has not enforced minimum sanitary standards.

The board increased license renewal fees, effective January 1991, partly to cover the cost of hiring an investigator who, according to board officials, would also function as an inspector. The General Assembly increased the board's appropriation by approximately \$8,000 for FY 91-92 to fund a part-time investigator. As of April 1992, the board had not hired an investigator, and expected to return to the general fund the money appropriated for that purpose.

Recommendation

The Board of Veterinary Medical Examiners should, without further delay, hire an investigator to conduct investigations and inspect facilities where veterinary medicine is practiced.

Fees

In reviewing fees charged by the board, we found that the board has not complied with all of the statutes governing fees. For example, the board has set some fees by regulation which exceed the amounts authorized by statute. Table C.2 identifies the fees involved.

Table C.2: Fees Which Do Not Comply With Statutes

Type of Fee	Authorized by Statute	Set by Regulation	Charged by Board
Temporary License (DVM)	\$15	Not to exceed \$100	\$100
Temporary Certificate (AHT)	\$5	\$10	\$10
Late Renewal (AHT)	\$5	\$30	\$5
Duplicate License (DVM)	Fee to be set by regulation	No regulation	\$25
Duplicate Certificate (AHT)	\$10	\$20	\$20

Recommendation

The General Assembly may wish to consider amending the board's fee statutes, either to increase the amounts authorized to accommodate the higher fees charged by the board, or to authorize the board to set all fees by regulation.

Proof of Graduation for Animal Health Technicians

The board does not require proof of graduation from a school of animal health technology. To be licensed as an animal health technician (AHT), §40-69-430(B)(2) requires the applicant to be a graduate of an accredited school of animal technology. In practice, the board does not require any proof of graduation, but relies on information stated by the applicant on the examination application form. However, veterinarian applicants are required to submit documentation, such as a copy of a diploma or a letter from a university, showing graduation from a college of veterinary medicine.

Recommendation

The board should require documentary proof that an animal health technician applicant is a graduate of an accredited school of animal technology.

Continuing Education for Animal Health Technicians

The board has not set continuing education requirements for AHTs. Section 40-69-480 provides that, when filing an application for license renewal, an AHT must include proof of continuing education as required by the board in its regulations. However, the board has not promulgated regulations governing continuing education for AHTs and does not require AHTs to attend any continuing education programs.

Recommendation

The board should, by regulation, establish continuing education requirements for animal health technicians.

Good Physical and Mental Health

Section 40-69-430(B)(4) requires an applicant for licensure as an AHT to submit evidence of good physical and mental health. However, the board does not enforce this requirement. It is questionable whether this requirement is necessary, especially since veterinarian applicants are not required to submit proof of good health.

Recommendation

The General Assembly may wish to amend §40-69-430(B)(4) of the South Carolina Code of Laws, to delete the “good physical and mental health” requirement for animal health technicians.

Good Moral Character

By statute, both veterinarian and AHT applicants are required to submit evidence of “good moral character.” This requirement is vague and not clearly related to an applicant’s competence. In addition, the board does not uniformly enforce the requirement. The exam application for veterinarians includes a certificate of good moral character, to be signed by someone who recommends the applicant. The application for AHTs does not contain a similar certificate.

Recommendations

The General Assembly may wish to amend §40-69-80(b) and §40-69-430(B)(5) of the South Carolina Code of Laws, to define or delete “good moral character.”

If the General Assembly does not delete the requirement, the board should be consistent in requiring evidence of “good moral character” from both veterinarian and animal health technician applicants for licensure.

Schedule of Fees FY 90-91

Examinations	
Veterinary	\$100
Animal Health Technician (AHT)	\$25
Licenses	
Temporary Veterinary License	\$100
Annual Veterinary License Renewal	\$50
Temporary AHT Certificate	\$10
Annual AHT Certificate Renewal	\$20
Other Fees	
Late Renewal for Veterinarian	\$50
Late Renewal for Animal Health Technician	\$5

Source: Board of Veterinary Medical Examiners.

Board Comments

The Board of Veterinary Medical Examiners elected not to submit comments to the report.

Board Comments

Board of Nursing

Contents

Introduction

Background D-1

Sunset Issues

Issue (1) Effects of Regulation D-3

Issue (2) Impacts of Deregulation D-4

Issue (3) Administrative Costs D-4

Issue (4) Efficiency of Administration D-5

Issue (5) Public Participation D-6

Issue (6) Duplication of Services D-7

Issue (7) Handling of Complaints D-7

Issue (8) Compliance With the Law D-8

Appendices

D-I Schedule of Fees D-9

D-II Organization Chart D-10

D-III Board Comments D-11

Contents

Introduction

After reviewing the laws, regulations and operations of the State Board of Nursing, we conclude that the board should be continued. The board regulates registered nurses, licensed practical nurses and nurse practitioners and approves nursing education programs in the state. Termination of this board would pose a threat to the health and safety of the citizens of South Carolina.

Background

Until 1935, the forerunner of the current State Board of Medical Examiners had authority over both medical doctors and nurses, as well as other health-related professions. Through the Nurse Practice Act, a separate State Board of Nursing was created in 1935. Authority for examination and registration of nurses was transferred to this new board, along with the right to develop standards for the approval of nursing education programs. The law also provided for reciprocity for nurses registered in other states who wished to be registered in South Carolina.

A 1947 revision of the Nurse Practice Act provided for the training and licensure of practical nurses, and annual renewal of licenses was implemented. In 1969, licensure was made mandatory for the practice of nursing in the state. In 1989, new practice requirements for continued competency were added and, in 1990, the size and representation of the board were increased.

The board is composed of nine members appointed by the Governor for four-year terms. Six must be registered nurses, residing in and representing each of the congressional districts. Two members must be licensed practical nurses, residing in and representing one of two regions in the state. All nurse members must be licensed in South Carolina, employed, and have at least three years of practice in their respective profession immediately preceding their appointment. The board's public member is chosen from the state at large and must not be licensed or employed as a health care provider.

The board publicizes pending board vacancies throughout the state; any individual, group or association may then submit nominations to the Governor for consideration. The board meets bimonthly and may hold additional meetings when necessary.

The Board of Nursing is responsible for adopting rules and regulations governing licensure and setting examination and other fees. The board gives four licensure examinations annually, two each for registered and

practical nurses. As of April 1992, the board recorded 26,748 licensed registered nurses and 10,430 practical nurses.

The board is authorized to revoke, suspend, or take other disciplinary action on nursing licenses as necessary. A panel of the board presides over disciplinary hearings which are held at least six times a year.

Nursing education programs throughout the state must be initially approved by the board and are reviewed on a continuing basis. There are 21 programs for registered nurses and 21 for practical nurses.

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Nursing has no direct control over the cost of nursing services. Registered nurses (RNs) and licensed practical nurses (LPNs) must pay fees for examination, annual license renewal, reciprocal licensure and reinstatement of inactive licenses, if applicable (see Appendix D-I). The license renewal fee of \$25, however, is .08% of the mean annual salary, \$29,303, paid to registered nurses in this state. This does not represent an undue burden on the members of the nursing profession, and is unlikely to increase the cost of health care to the consumer.

We found no evidence to indicate that the licensure program for nurses and practical nurses has resulted in questionable limits to competition or unreasonable barriers to entry into the profession. In response to our request for review of the board's statutes and regulations, staff of the Federal Trade Commission found no potentially restrictive or anti-competitive practices.

According to the Division of Research and Statistical Services (DRSS) within the Budget and Control Board, the supply of nurses in South Carolina since 1986 has not kept pace with the demand. The board, together with DRSS, helps maintain a database to project the future need for nurses statewide.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Termination of the State Board of Nursing could result in direct harm to the public. The board has statutory authority to license and discipline nurses, to develop competency standards, and to review and approve nursing education programs. The board is authorized to remove nurses from practice based on evidence of unethical or unprofessional conduct. Through these functions, the board can hold nurses accountable for quality of care. All states regulate nurses through licensure.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Board of Nursing receives an annual appropriation from the General Assembly. The board collects revenues through license application, license renewal and miscellaneous fees. The board has 20 full-time positions: an executive director; four program nurse consultants; one program nurse specialist; two special investigators; a business manager and accounting technician; and 10 administrative and support staff (see Appendix D-II).

From FY 87-88 to FY 88-89, the board accumulated a shortfall of \$72,785 in meeting the appropriation act requirement that the board must generate revenue equal to 115% of its appropriation. Revenue generated in FY 89-90 and FY 90-91 exceeded the shortfall from the previous two years, as well as the appropriation act requirements, by \$680,315.

The following table shows board revenues, expenditures and appropriations for the past five years.

**Table D.1: Source of Revenues,
Expenditures and Appropriations**

	FY 86-87	FY 87-88	FY 88-89	FY 89-90	FY 90-91
Revenues					
License Fees	\$570,202	\$651,781	\$733,539	\$1,182,153	\$1,234,524
Miscellaneous Revenues	2,640	2,987	4,097	2,770	4,667
Total	\$572,842	\$654,768	\$737,636	\$1,184,923	\$1,239,191
Expenditures					
Personal Services	\$298,237	\$345,945	\$371,094	\$382,413	\$408,144
Other Operating Expenses	184,259	195,754	213,923	244,685	250,755
Fringe Benefits	59,276	69,588	75,669	79,602	97,365
Total	\$541,772	\$611,287	\$660,686	\$706,700	\$756,264
State Appropriation					
Total	\$585,088	\$611,398	\$662,679	\$706,934	\$780,036

Source: State Budget and Control Board documents.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Board of Nursing implemented all recommendations from our 1986 audit. As we recommended, the General Assembly changed the definition of nursing practice and the board proposed criteria for the extended role of nurse practitioners. A minimum number of practice hours are now required for an active license, and a more comprehensive process for handling complaints has been put in place. Previously, complaints were screened through a preliminary investigation before going to the board; now all complaints go before the board for an initial approval to

investigate or dismiss. The policy and procedures manual was revised and updated. We reviewed a limited sample of licensing files for administrative efficiency and board compliance with laws and regulations. No material deficiencies were found.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Board of Nursing encourages public participation in a variety of ways. It holds six two-day board meetings a year. In addition, a board subcommittee meets six times a year to review disciplinary cases and make recommendations to the board. A schedule of board meetings is published quarterly in the board's news magazine, which also contains other information of interest to licensees. The board posts agendas of meetings at the board office, as required by law. The board also has listings in the state government and City of Columbia telephone directories.

Consumer representation on the board is provided by a public member who is not licensed or employed in the health care field. Currently this position is vacant.

The board receives input from the nursing profession through two state-wide advisory committees, which meet six times a year. The Advisory Committee on Nursing provides input on trends and issues in nursing. The Nursing Practice and Standards Committee assists the board in rendering advisory opinions.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The State Board of Nursing is the only government agency with statutory authority to administer the rules and regulations governing nursing practice in South Carolina. Its responsibilities in overseeing nursing education programs overlap to some degree with those of the education agencies in the state. Also, the National League for Nursing, according to a board official, accredits nursing programs on a voluntary basis. However, these related activities are coordinated and responsibilities are clearly designated to avoid any duplication of services. Also, it is common practice for nursing boards to approve nursing programs; in seven other southeastern states, boards of nursing review, approve and set standards for nursing education programs.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Board of Nursing processes complaints in an efficient manner. The board received 207 complaints during FY 89-90, and 285 complaints in FY 90-91. We randomly sampled 111 complaints for the two years and found that the board processed the complaints consistently. We reviewed the 87 complaints which had been resolved either through dismissal or a board decision; the remaining complaints were under investigation at the time of our review. Of those 87 complaints, 61 (70%) of the cases were resolved within 6 months of receiving the complaints. Of the remaining 26 complaints, 20 (23%) were resolved within 6 to 12 months, while 6 (7%) took longer than a year.

Since our 1986 audit, the board has developed extensive policies, procedures and forms for processing complaints. The board's two investigators are assigned complaints on a regional basis. Every month, the board's legal and disciplinary staff review and update all cases under investigation during caseload review meetings.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Nursing is governed by statutes and regulations enacted by the state of South Carolina. We reviewed the laws and regulations applicable to the administration of the board and found the board to be in compliance.

Schedule of Fees FY 90-91

Registered Nurses (RN)	
Examination/Re-Examination	\$65
Endorsement	\$75
Temporary Permit	\$10
Independent Practice	
Initial	\$50
Biennial Renewal	\$15
Nurse Practitioner ^a	
Initial	\$15
Renewal	\$5
Licensed Practical Nurses (LPN)	
Examination/Re-Examination	\$45
Endorsement	\$75
Applicable to Both RNs and LPNs	
License Renewal	\$25
Reinstatement of Lapsed License	\$45
Reinstatement of Disciplined License	\$125
Official Inactive Status	\$15

^a Must also be a licensed RN.

Source: Regulation 91-30, South Carolina Code of Laws.

LAC/SUN-92-D Board of Nursing



Board Comments

Board Comments

State Board of Nursing
for
South Carolina

(803) 731-1648
General Information

May 26, 1992



Suite 220
220 Executive Center Drive
Columbia, S.C. 29210

Mr. George L Shroeder
Director
Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Shroeder:

The Board of Nursing has received the final report of the Legislative Audit Council. On behalf of the Board, I wish to extend our appreciation to the auditors for the thorough and proficient manner in which the audit was conducted. The report has been carefully reviewed by members of the Board and selected staff and we have found the report to accurately reflect the manner in which this agency administers the Laws Governing Nursing in South Carolina. As the Executive Director of this agency I would like to publicly express my appreciation to a committed staff who go "above and beyond the call of duty" in providing regulatory and licensure services to the public. The Legislative Audit Council's report reflects the quality, effectiveness and efficiency of the services provided by our staff.

There are two areas I wish to comment on within the report. The first is related to the Board of Nursing's statutory authority to review and approve nursing education programs. As documented in the report, the Board of Nursing and the State educational agencies both have regulatory oversight over nursing education programs. The purpose and focus of the oversight, however, are different. The Board's purpose in approving nursing education programs is focused on public protection and preparation of students for entry level licensure. The Board has written joint agreements with each educational agency that outlines the joint oversight and collaborative relationship between the Board and the educational agency. The Board also provides copies of all survey reports and final actions of the Board in respect to any nursing education program to the educational agency. Any new nursing education program is jointly reviewed and approved by both bodies.

The National Council of State Boards of Nursing documents that 54 State Boards of Nursing have the statutory authority to review and approve nursing education programs. The auditors reviewed statutes of 7 southeastern states, all of which had criteria for review and approval of nursing education programs similar to those in South Carolina.

The second area I wish to address has to do with the revenue the Board of Nursing collects for the delivery of its services. Since FY 90 the Board

Mr. George L. Shroeder
May 26, 1992
Page Two

has contributed \$680,316 to the General Fund, above and beyond the 110% provided for by the State Appropriations Act. These revenues were generated with the expectation that increased services provided for by the Board would result in an increased appropriation base to provide these services. However, the Board has not received the requested increases in its appropriation, and has, in fact, sustained budget cuts over the last 2 years along with other state agencies. These cuts are now beginning to affect the service delivery of the agency.

The Board has not been able to purchase new hardware for its local area network in over three years. Many of our staff are still using 088 processors that will not run the new versions of software. An approved FTE for the disciplinary department to assist in monitoring a caseload of approximately 200 nurses and assisting with complaint investigation has yet to be filled due to budget cuts.

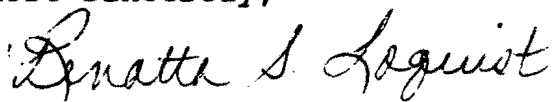
There is much interest on the part of the nursing community for the development of a statewide alternative program for chemically dependent nurses. The Board has been discussing the idea with the South Carolina Alcohol and Drug Abuse Commission and is willing to sponsor such a program jointly but we need access to the revenue we raise.

Additionally there has been much debate and concern over the recurring nursing shortage. Many states have dedicated portions of the licensure fees they collect toward a student loan and scholarship program that encourages both recruitment into nursing and also new graduates working in rural areas.

There are many pressing needs in our State and the Board of Nursing is certainly willing to do our share in compensating the State for services provided to our agency. However, there must be a plan created that assures the Board that a percentage of the revenue generated to provide licensure and regulatory services can be accessed for those services upon the review and approval of the General Assembly. Unless such a plan can be devised, the Board may be in the position of re-evaluating the cost of its services and making appropriate modification to its fees.

The Board appreciates the opportunity to offer our comments. Once again, we appreciate the professionalism exhibited by your staff in accomplishing the audit. Please advise us of the next steps within the Sunset Review process.

Most Sincerely,



Renatta S. Loquist, RN, MN
Executive Director

RSL/bs

Board of Chiropractic Examiners

Contents

Introduction

Background E-1

Sunset Issues

Issue (1) Effects of Regulation E-3

Issue (2) Impacts of Deregulation E-3

Issue (3) Administrative Costs E-4

Issue (4) Efficiency of Administration E-5

Issue (5) Public Participation E-6

Issue (6) Duplication of Services E-7

Issue (7) Handling of Complaints E-7

Issue (8) Compliance With the Law E-9

Appendices

E-I Schedule of Fees E-11

E-II Board Comments E-13

Contents

Introduction

After reviewing the laws and operations of the South Carolina Board of Chiropractic Examiners, we conclude that regulation of chiropractors should be continued. Termination of the board would represent a threat to public health and safety. We found that the board is generally complying with state laws and regulations and operating efficiently. However, we noted that complaint handling continues to need improvement in several areas.

Background

State law defines chiropractic practice as spinal analysis of nerve transmission interference and treatment through vertebral column joint adjustments. These adjustments are designed to rehabilitate the patient without the use of drugs or surgery and thereby restore and maintain health. All 50 states and the District of Columbia regulate chiropractors.

Act 892 of 1932 created the Board of Chiropractic Examiners to examine and license South Carolina chiropractors. In 1980, the statute was amended to increase the size of the board to eight members. The board must have one member from each congressional district and two at-large members, one of whom is a public member not of the chiropractic or medical professions. The 1980 amendments also revised statutes concerning chiropractic practice, the board, and regulation of chiropractic schools. The board is authorized to hire an executive director, the board's only full-time employee.

The board's primary functions are to monitor entry into the profession by enforcing requirements governing examination and education, and to maintain high standards of competency through rules of professional conduct, continuing education, and discipline of licensees. Successful applicants for chiropractic license must complete two years of general undergraduate course work at an accredited college or university, graduate from an accredited chiropractic college, pass the National Board of Chiropractic Examiners exam, and pass the written and practical exam administered by the South Carolina board.

In June 1991, the board's licensee roster totalled 851 licensees. The board licensed 116 new chiropractors in FY 90-91.

Introduction

Sunset Issues

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The State Board of Chiropractic Examiners does not set prices to be charged by licensees for their services. The board assesses fees for examination, reexamination, and annual license renewal (see Appendix E-I). Also, the board requires each licensee to complete 12 hours of continuing education annually; however, as with board fees, this requirement is not so costly to the licensee that it is likely to affect the price of services.

We asked the staff of the Federal Trade Commission (FTC) to review the board's statutes and regulations to determine if there are any possible restrictive or anticompetitive practices. The FTC staff found nothing that would inhibit competition and thereby raise prices.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Substandard chiropractic care can directly impact public health. All 50 states and the District of Columbia license chiropractors and regulate practice to safeguard public health. The board examines and licenses candidates to assure citizens that only qualified persons are allowed to practice chiropractic. In addition, the board enforces relevant statutes and regulations governing practice to protect the public from chiropractors whose conduct falls below the standards of the profession. Therefore, the continuing regulation of this profession is in the best interest of the public.

Issue (3) Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

The Board of Chiropractic Examiners receives an annual appropriation from the General Assembly. The board collects revenues through examination, license renewal, and fines. The board has one full-time employee, the executive director. The board substantially met the appropriation act requirement that, for FY 87-88 through FY 89-90, a professional licensing agency must generate revenue equal to 115% of its appropriation. The board also met the requirement for FY 90-91 when the ratio was reduced to 110%. Table E.1 outlines the board's revenues, expenditures, and appropriations.

**Table E.1: Source of Revenues,
Expenditures and Appropriations**

	FY 86-87	FY 87-88	FY 88-89	FY 89-90	FY 90-91
Revenues					
License Fees	\$46,207	\$52,703	\$58,099	\$62,823	\$73,126
Exam Fees	16,350	14,550	12,275	23,075	22,875
Miscellaneous Revenues	•	•	•	•	500
Total	\$62,557	\$67,253	\$70,374	\$85,898	\$96,501
Expenditures					
Personal Services	\$23,757	\$23,211	\$29,844	\$32,811	\$41,874
Other Operating Expenses	25,105	27,178	27,353	20,668	28,531
Fringe Benefits	3,262	3,095	4,878	5,392	7,000
Total	\$52,124	\$53,484	\$62,075	\$58,871	\$77,405
State Appropriation					
Total	\$53,152	\$54,086	\$63,035	\$62,869	\$77,524

Source: State Budget and Control Board documents.

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

State law requires all chiropractors to be licensed by the board. The board maintains files on chiropractors licensed to practice in South Carolina, and ensures that they fulfill annual license renewal and continuing education requirements. The executive director has recently updated the board's computer system for keeping track of licensees. As

of June 1991, 851 chiropractors were licensed to practice in South Carolina.

We reviewed a limited sample of files for administrative efficiency and board compliance with applicable state laws and regulations in granting chiropractic licenses. No material deficiencies were found.

Our 1986 sunset review of the board recommended that the board adopt a policies and procedures manual for the state exam and other board operations. The executive director is in the process of developing a written policies and procedures manual.

Currently, applicants must take the three-part National Board of Chiropractic Examiners exam before they can qualify for licensure. The only exam now administered by the board is a practical exam which encompasses diagnosis, technique and radiology, and a written exam on state law. According to the chairman, the board is using video cameras to tape the practical exam to help improve consistency and impartiality in grading.

Recommendation

The Board of Chiropractic Examiners should complete development of a policies and procedures manual applicable to all board activities.

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

As required by statute, the eight-member board includes one lay member from the general public. The board conducts two to five public meetings a year. Notices and agendas of these meetings are posted at the board offices and are mailed to a major newspaper in the state weeks in advance. Additionally, the board is listed in both the state government and City of Columbia telephone directories. The board also publishes information on

its activities in a column by the executive director in the South Carolina Chiropractic Association newsletter.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The board's functions are not duplicated by any other state or federal entity. No other agency or entity has licensing, examining, or disciplinary authority over chiropractors.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The board's complaint handling has improved significantly since our 1986 audit. They have instituted a complaint log and a centralized complaint file and are also taking steps to standardize complaint handling procedures by amending board regulations. However, the board has not yet implemented a standard complaint form as recommended in 1986.

Because complaints were not logged before February 1991, we limited our review to the 30 complaints logged between February 1991 and January 1992. Nearly all complaints were resolved within a reasonable time frame; 75% of the closed complaints were resolved within 69 days. We found that closed complaints were investigated thoroughly and resolved appropriately with the following exceptions:

- Written investigation reports were not routinely found in the complaint files. In two cases, investigation documentation lacked basic

information about whether the board addressed all complaint allegations. The board has taken steps to improve documentation by implementing a standard investigation report form. The executive director feels this will bring greater accountability and make decisions more defensible by maintaining a written record of the decision's basis.

- Resolution of one complaint did not adequately protect public health. A complainant reported a misleading advertisement inferring that chiropractic care can treat prostate problems. He was concerned that the uninformed might neglect or delay more appropriate medical care.

Rather than using a traditional ad layout, the advertisement was formatted like a newspaper article with a nearly 1/2 inch block headline, "PROSTATE PROBLEMS?", and a byline with the chiropractor's name. The bottom of the ad stated in large block letters the chiropractors' names and "Results are what counts." The advertisement further states:

. . . we recognize the fact that the nerve system (brain stem) is in direct control of all tissues, organs, and systems of the body. Disrupt the function of the nerve system and you will have a body not operating as it was designed to do. It is truly out of control- hence, prostate problems.

In his report, the board investigator agreed with the consumer. He stated: "There have been no studies or research which have been published in any journals that I know of that would quantify the efficacy of chiropractic care for prostate problems."

The board required the chiropractor to change only one sentence in the ad from "It is truly out of control—hence, prostate problems." to "It is truly out of control *and may possibly cause* prostate problems" [*Emphasis Added*]. However, the board did not address other parts of the advertisement which infer that chiropractic treats prostate problems effectively.

It is unlikely that this minor change would communicate to uninformed consumers that the effectiveness of chiropractic in treating prostate problems is unknown. Furthermore, the complainant stated that the chiropractor had also advertised that chiropractic could be used to treat cancer and heart problems. The complaint file contains no evidence that these allegations were investigated.

- During our review period, 12 of the 16 complaints dismissed were neither discussed nor voted on by the full board. These complaints were dismissed on the basis of a single investigating board member's finding of no violation of statute or regulation. Statutes authorize the board to take action against licensees for misconduct. The board's statutes do not provide for a single investigating board member to dismiss a complaint. Therefore, like the authority to take action against a licensee, the authority to dismiss a complaint rests with the board as a whole.

Recommendations

The Board of Chiropractic Examiners should create and use a standard complaint form.

The board should continue to improve investigation report documentation.

The board should define what types of health problems chiropractic can and cannot effectively treat. Once this is established, the board should ensure that misleading advertising claims which are potentially dangerous to public health are discontinued.

The full board should vote on the disposition of all complaint recommendations of investigating board members.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Chiropractic Examiners is governed by the South Carolina Code of Laws. The board is in the process of drafting regulations that will replace all its existing regulations. A drafting notice was published in the February 28, 1992, issue of the State Register. During our review, we found several instances where the board is no longer conforming to existing regulations but is in fact following the proposed regulations.

For example, current board practices as well as the proposed regulations require that chiropractors wishing to use chiropractic physiotherapy pass a separate exam. This requirement is not mentioned in existing regulations. In addition, current practice and proposed regulations list a minimum of six subjects which are to be tested in the practical exam. Existing regulations require state written examinations in a minimum of ten subjects, some of which are now part of the National Board exams and no longer tested by the board.

New regulations are needed to update the licensing and examination standards. The board should have complied with Administrative Procedures Act requirements by waiting until these regulations were passed into law before following them. It may be confusing to licensees and applicants for examination to have two sets of regulations in effect.

We found no major issues of noncompliance in other board operations.

Recommendation

The Board of Chiropractic Examiners should follow requirements for state agency rule-making, in accordance with the Administrative Procedures Act.

Schedule of Fees FY 90-91

License Fees	
License Renewal ^a	
In-state	\$120
Out-of-state	\$60
Exam Fees	
Examination ^b	\$150
Exam Retakes	
One part	\$25
Two parts	\$50

a Fees for senior status chiropractors (those over age 65 who have filed for this status with the board) are \$60 for in-state and \$30 for out-of-state.

b Includes application fee and license for successful applicants.

Source: The Board of Chiropractic Examiners.

Board Comments

Board Comments

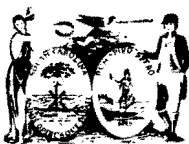
RICHARD C. MOONEYHAM, D.C., Chairman
1655 Broad River Road
Columbia, S.C. 29210
7729-5241

MICHAEL L. COON, D.C., Member
435 Folly Road
Charleston, S.C. 29412
795-3056

DAVID H. MRUZ, D.C., Member
3014 Wade Hampton Blvd.
Taylor, S.C. 29687
292-6777

ROGER R. ROFF, D.C., Member
P.O. Box 984
Dillon, S.C. 29536
774-3621

Board of Chiropractic Examiners State of South Carolina



ALANA T. HOLMES, Executive Director
810 Dutch Square Blvd., Suite 395
Columbia, S.C. 29210
PHONE (803) 731-1422

PAUL R. JOHNSON, JR., D.C., Vice Chairman
P.O. Box 476
Walhalla, S.C. 29691
638-2889

LAWRENCE F. JONES, Member
301 King Street
Charleston, S.C. 29401
723-6444

RICHARD E. PLUMMER, D.C., Member
111 Springfield Road
Inman, S.C. 29349
578-1181

RON C. SISK, D.C., Member
202 S. Shelby Street
Blacksburg, S.C. 29702
839-2081

May 6, 1992

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Shroeder:

The board appreciates the valuable insights into its operation and has already implemented some of the recommendations.

Our responses and comments to the audit are as follows:

1. Efficiency of Administration.

The Board has developed a general policy and procedure manual relative to office operations and includes exam requirements and general procedures regarding exam. Office administrative procedures will be developed in the future.

The executive director is developing a investigation and hearing procedure manual for use by board members. The expectation is that it will serve as a guideline for board members in the different phases of the complaint process and will aide in providing consistency and fairness in dealing with complaints.

2. Handling of Complaints.

a. The board has created and implemented a standard complaint form.

b. The complaint cited in the report regarding misleading advertising is regretful. The board feels that, in light of recommendations made to it regarding the prosecution of advertising complaints, it went as far as it could without infringing on First Amendment rights. The board had no evidence of any other ads referring to treatment of cancer and heart problems. Since the ad was retracted altogether from the newspaper, the ideal result was achieved.



0 01 01 0157267 4

Mr. George L. Schroeder

Page Two

May 6, 1992

3. Compliance with Law.

The board will follow requirements for state agency rule-making in accordance with the Administrative Procedures Act.

Yours truly,

A handwritten signature in dark ink, appearing to read "Richard C. Mooneyham", written over the typed name.

Richard C. Mooneyham, D. C.
Chairman

Legislative Audit Council

400 Gervais Street
Columbia, SC 29201
(803)253-7612
(803)253-7639 FAX

Director

George L. Schroeder

Professional Staff

Priscilla T. Anderson
Marcia S. Ashford
Thomas J. Bardin Jr.
Lyndon P. Chappell, CPA
Randy Cherry
Marilyn J. Edelhoch, Ph.D.
Jane McCue Johnson, J.D.
Bobbi Leighton McCoy
Bethany Allen Narboni
Elizabeth W. Oakman
Cheryl A. Ridings
Sara Schechter-Schoeman, J.D.
Perry K. Simpson
Kathleen C. Snider
Jane I. Thesing
Andrew M. Young

Administrative Staff

Susan S. Long
Candice H. Pou
Maribeth Rollings Werts

This report was published for a total cost of \$1,322; 350 bound copies were printed at a cost of \$3.78 per unit.